ARUNASALAM THEVAR v. PUBLIC PROSECUTOR

[A.Cr.J. (Thomson J.) February 17, 1956]

[Ipoh — Criminal Appeal No. 5 of 1956]

Minor Offences Ordinance, 1955, s. 29(1) — Fraudulent possession of property — Question to be asked by the Magistrate in coming to a decision

This was an appeal from the decision of the learned Magistrate who convicted the appellant for an offence under s.29(1) of the Minor Offences Ordinance.

In such cases, there are two questions which have to be decided one way or the other before there could be any decision as to whether the appellant was to be convicted: (1) Was the accused carrying something that might be reasonably suspected of being stolen?; (2) If it were something reasonably suspected of being stolen, did he give a satisfactory account of how he came by it?

The first question must be answered by the Magistrate on a consideration of all the surrounding circumstances. The second question again was for the Magistrate to decide in the light of the circumstances as a whole. It was a question for the Magistrate as a reasonable prudent man as to whether or not the explanation given to the police or in Court to the Magistrate himself was a satisfactory explanation.

In this case the learned Magistrate had not made it clear in his grounds of judgment that he did put these questions to himself and therefore an order for retrial was made.

MAGISTRATE'S CRIMINAL APPEAL.

N. Sharma for the appellant.

A. P. Jack (Federal Counsel) for the respondent.

Thomson J. (delivering oral judgment): — In this case I have decided to order a re-trial because on consideration I am unable to satisfy myself as to whether or not the Magistrate correctly applied the law to the evidence before him.

The appellant was charged with an offence in contravention of section 29(1) of the Minor Offences Ordinance, 1955, which is to the effect that any person who has in his possession or conveys in any manner anything which may be reasonably suspected of being stolen or fraudulently obtained shall, if he fails to account satisfactorily how he came by the same, be liable to a fine, and so forth.

The facts are that the appellant was stopped in one of the streets in Kampar where he was carrying a very large quantity of copper wire on the back of his bicycle. He was stopped by a detective and there was some sort of conversation between him and the detective.

In view of the course I am taking I do not propose to discuss the nature of that conversation which is in controversy. At that time the appellant may or may not have offered some explanation as to how he came to be in possession of the wire. In any event, at his subsequent trial he gave an explanation to the Magistrate.

Now on that there were two questions to be decided one way or the other before there could be any decision as to whether the appellant was to be convicted.

The first of these questions was:—

Was he carrying something that might be reasonably suspected of being stolen?

That was a question to be answered by the Magistrate on a consideration of all the surrounding circumstances

The second question was:—

If it were something reasonably suspected of being stolen, did he give a satisfactory account of how he came by it?

That, again, was for the Magistrate to decide in the light of the circumstances as a whole. And I hope it is unnecessary for me to observe that it was a question for the Magistrate as a reasonable prudent man as to whether or not the explanation given by the appellant, whether it was given to the Police or whether it was given in Court to the Magistrate himself, was a satisfactory explanation.

Now, I am not at all clear from the Magistrate's Grounds of Judgment that he did put these questions to himself. It is possible to say that he put the second question to himself. If that were all there were to it I should not be disposed to allow the appeal. But I am not satisfied that he put the first question to himself.

In the circumstances, I feel in the interests of justice that the conviction should be set aside and that the case should be tried anew.

Re-trial ordered.

COMPTROLLER OF INCOME TAX v. HARRISON & CROSFIELD (MALAYA) LTD.

[P.C. (Lord Oaksey, Lord Mortorn of Henryton, Lord Radcliffe, Lord Cohen and Mr. L.M. de Silva) March 8, 1956]

[Privy Council Appeal No. 27 of 1954]

Income Tax Ordinance, 1947, ss. 39(a) and 75(1) — Company dividend — Paid out of "chargeable income" for year of assessment — Deduction of tax — Failure of Comptroller to exercise discretion — Practice.

This was an appeal from the judgment of the Court of Appeal, Federation of Malaya reported in (1954) M.L.J. 83. The appeal arose out of an assessment to income tax made upon the respondent company by the Comptroller of Income Tax for the year of assessment 1951 under the Income Tax Ordinance. The question was what rate of income tax ought to be charged in respect of a part of the income of the respondent company amounting to $533,333 that was distributed by way of dividend to its shareholders in November 1950. The respondent's trading year ended on June 30, 1950. The